

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 12, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

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STATE CORPORATION COMMISSION

CASE NO. BFI-2008-00436

Ex Parte: In re: limited revisions
to Payday Loan Act regulations

ORDER TO TAKE NOTICE

On September 19, 2008, the State Corporation Commission ("Commission") entered an Order Adopting Final Regulations to implement significant amendments to the Payday Loan Act, § 6.1-444 et seq. of the Code of Virginia, that were adopted by the General Assembly in 2008. The final regulations were adopted effective January 1, 2009, in order to coincide with the effective date of the statutory amendments.

Following the entry of the September 19, 2008, Order, Commission staff has been working with the database provider, Veritec Solutions, LLC ("Veritec"), to facilitate the development and implementation of the statewide payday lending database in anticipation of the January 1, 2009, effective date. During this process, Commission staff has learned that Veritec has been developing a telephone interactive voice response system ("IVR") for purposes of transmitting certain limited information to the database when a licensed payday lender is unable to access the database via the Internet due to technical problems beyond the licensee's control. Although an IVR has obvious benefits, such as its 24-hour availability, subsections L and M of 10 VAC 5-200-110 do not contemplate an alternative means of database access such as an IVR. Moreover, Veritec's IVR will not be operational by January 1, 2009. Veritec has further reported to Commission staff that it cannot fully accommodate the manual call center process that is envisioned under subsections L and M beginning on January 1, 2009.

In order to address the aforementioned matters and emerging technology, Commission staff has recommended that the Commission immediately delay the effective date of subsections L and M of 10 VAC 5-200-110 and concurrently propose amendments to these subsections in order to take advantage of any alternative means of database access that Veritec may develop in the future. Commission staff has also proposed a change to 10 VAC 5-200-60, which pertains to the required posting of charges. This change simply incorporates the statutory requirement that already exists in § 6.1-459(18). A new section, 10 VAC 5-200-130, has also been proposed in order to provide the Commission with greater flexibility under its payday lending regulations.

NOW THE COMMISSION, having considered the record, staff's recommendations, and the proposed amendments, finds that the effective date of subsections L and M of 10 VAC 5-200-110 should be delayed, certain limited changes should be made to its payday lending regulations, and all licensed payday lenders and other interested parties should be afforded an opportunity to file written comments or request a hearing on the proposed amendments. The Commission also finds that with a delay in the effective date of subsections L and M, an interim process should be prescribed to address the potential unavailability of the payday lending database.

IT IS THEREFORE ORDERED THAT:

- (1) The effective date of subsections L and M of 10 VAC 5-200-110 is hereby delayed until April 1, 2009.
- (2) The proposed regulations are appended hereto and made a part of the record herein.
- (3) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before January 20, 2009. Comments or

requests for a hearing shall be limited to the proposed amendments only. All correspondence shall contain a reference to Case No. BFI-2008-00436. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(4) The proposed regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(5) Until such time as the Commission adopts revised regulations for subsections L and M of 10 VAC 5-200-110, or April 1, 2009, whichever is earlier, licensed payday lenders shall follow an interim process that comports with subdivisions L 2, L 3, and M 2 of 10 VAC 5-200-110 (as set forth in the Commission's September 19, 2008, Order Adopting Final Regulations) when they are unable to access the database due to technical problems beyond their control. Therefore, regardless of whether Veritec's call center is open or able to access the database, a licensee should not contact Veritec's call center to either check applicant eligibility or enter loan transaction information into the database on the licensee's behalf.

(6) AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order and the proposed regulations to all licensed payday lenders and such other interested persons as he may designate.

STATE CORPORATION COMMISSION

Chapter 200 10 VAC-5-200 Payday Lending Rules

10VAC5-200-60. Posting of charges.

A. A licensee shall conspicuously post in its licensed location a schedule of payments, fees and interest charges, with examples using (i) a \$300 loan payable in 14 days; (ii) a \$300 loan payable in 30 days; (iii) a \$300 loan payable in 31 days; ~~(iii)~~ (iv) a \$300 loan payable in 62 days; ~~(iv)~~ (v) a \$300 loan payable through an extended payment plan that is elected on the date the loan is obtained; ~~(v)~~ (vi) a \$300 loan payable through an extended payment plan that is elected on the 15th day of a 31-day term; and ~~(vi)~~ (vii) a \$300 extended term loan.

B. A licensee shall display its fees and interest charges not only as a dollar amount, but also as an Annual Percentage Rate, which shall be stated using this term, calculated in accordance with Federal Reserve Board Regulation Z (12 CFR 226.1 et seq.).

10VAC5-200-110. Payday lending database.

A. This section sets forth the rules applicable to the payday lending database referred to in § 6.1-453.1 of the Code of Virginia.

B. Except as otherwise provided in this section, a licensee shall transmit all information to the database via the Internet. In order to maintain the confidentiality and security of the information, a licensee shall not transmit information to the database using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless (Wi-Fi) connections, or other connections that are not secure. A licensee shall maintain generally accepted security safeguards to protect the confidentiality of the information transmitted to the database, including but not limited to

installing and regularly updating malware protection (antivirus and antispyware) software and a firewall.

C. Prior to making a payday loan, a licensee shall transmit the following information to the database for purposes of determining whether an applicant is eligible for a payday loan. The licensee shall obtain the applicant information required by this subsection in accordance with the provisions of subsection D of this section.

1. Name of licensee and license number.
2. Office location of licensee.
3. First and last name or identification number of employee entering information into the database.
4. Applicant's first and last name.
5. Last four digits of applicant's driver's license number or identification card number.
6. Applicant's address.
7. Applicant's date of birth.

D. 1. A licensee shall obtain the information required by subdivisions C 4, 5, 6, and 7 of this section directly from the applicant's unexpired original driver's license or identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia), regardless of whether the information on the driver's license or identification card is still accurate. A licensee shall not accept photocopies, facsimiles, or other reproductions of a driver's license or identification card.

2. A licensee shall photocopy the applicant's driver's license or identification card, partially redact the driver's license number or identification card number so that

only the last four digits of the number remain visible, and retain the redacted photocopy in its records.

3. A licensee shall not accept a driver's license or identification card from an applicant when there is reason to believe that (i) it belongs to an individual other than the applicant or (ii) it is fake, counterfeit, or has been altered, fraudulently obtained, forged, or is otherwise nongenuine or illegitimate.

E. If the database advises a licensee that an applicant is ineligible for a payday loan, then the licensee shall inform the applicant of his ineligibility, instruct the applicant to contact the database provider for information about the specific reason for his ineligibility, and provide the applicant with the toll-free telephone number of the database provider.

F. If the database advises a licensee that an applicant is eligible for a payday loan, then the licensee shall transmit the following additional information to the database prior to making a payday loan:

1. Application date.
2. Loan number.
3. Date of loan.
4. Principal amount of loan.
5. Interest rate.
6. Dollar amount of interest to be charged until date of loan maturity.
7. Dollar amount of loan fee to be charged.
8. Dollar amount of verification fee to be charged.
9. Dollar amount of total finance charges.

10. Annual Percentage Rate (APR) of loan.

11. Number of days in applicant's pay cycle.

12. Number of days in loan term.

13. Date loan is due.

14. Dollar amount of check given by applicant to secure the loan (i.e., at the time the loan is made).

G. If the database advises a licensee that an applicant is eligible for an extended payment plan or extended term loan and the applicant subsequently elects an extended payment plan or extended term loan, then the licensee shall transmit the following additional applicable information to the database no later than the time the licensee closes for business on the date the applicant enters into the extended payment plan or extended term loan:

1. Date the extended payment plan or extended term loan is entered into.

2. Principal amount owed under the extended payment plan or extended term loan.

3. Number of installment payments and the amount of each payment to be made under the extended payment plan or extended term loan.

4. Date each installment payment is due under the extended payment plan or extended term loan.

5. Number of days in term of extended payment plan or extended term loan.

H. For purposes of this section, a licensee closes for business when it officially shuts its doors to the general public on a business day, or within one hour thereafter.

I. A licensee shall generate a separate printout from the database showing the results of each loan eligibility query, including whether an applicant is eligible for an extended payment plan or extended term loan, and retain the printout in its loan records.

J. Except as otherwise provided in subdivisions 3, 7, and 8 of this subsection, a licensee shall transmit the following additional information, as applicable, to the database no later than the time the licensee closes for business on the date of the event:

1. If a borrower cancels a payday loan, the date of the cancellation.
2. If a payday loan (including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan) is repaid or otherwise satisfied in full, (i) the date of repayment or satisfaction, and (ii) the total net dollar amount ultimately paid by the borrower in connection with the loan (i.e., principal amount of loan plus all fees and charges received or collected pursuant to §§ 6.1-460 and 6.1-461 of the Code of Virginia, less any amount refunded to the borrower as a result of overpayment).
3. If a check used to repay a loan in full is returned unpaid, the date the check is returned unpaid and the dollar amount of the check. A licensee shall transmit such information to the database no later than five calendar days after the date the check is returned unpaid.
4. If a licensee collects a returned check fee from a borrower, the dollar amount of the returned check fee.
5. If a licensee initiates a legal proceeding against a borrower for nonpayment of a payday loan, the date the proceeding is initiated and the total dollar amount sought to be recovered.

6. If a licensee obtains a judgment against a borrower, the date and total dollar amount of the judgment.

7. If a judgment obtained by a licensee against a borrower is satisfied, the date of satisfaction. A licensee shall transmit such information to the database on the date the licensee learns that the judgment has been satisfied.

8. If a licensee collects any court costs or attorney's fees from a borrower, the dollar amount of the court costs or attorney's fees. A licensee shall transmit such information to the database on the date the licensee learns that the court costs or attorney's fees have been paid.

9. If a licensee charges off a payday loan as uncollectible, the date the loan is charged off and the total dollar amount charged off.

K. 1. If any information required to be transmitted by a licensee to the database is automatically populated or calculated by the database provider, the licensee shall verify the information and immediately correct any inaccuracies or other errors.

2. If a licensee becomes aware of any changes, inaccuracies, or other errors in the information previously verified or transmitted by the licensee to the database, the licensee shall immediately update or correct the database.

L. The following provisions address a licensee's inability to access the database via the Internet at the time of loan application:

1. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall ~~contact the database provider's call center and request that the call center enter~~ to the extent possible use the database provider's alternative means of database access, such as a telephone

interactive voice response system, for purposes of transmitting the information required by this section and query the database on the licensee's behalf. The licensee shall document in its records the technical problems it experienced, the specific information it provided to the call center, the result of each query (including the applicant's eligibility for an extended payment plan or extended term loan), the date and time of the phone call, and the first and last name or identification number of the person in the call center who provided the results of the query to the licensee obtaining applicant eligibility information from the database.

2. If at the time a licensee receives a loan application the licensee is unable to access the database due to technical problems beyond the licensee's control and the database provider's call center is either closed or also unable to access the database, If a licensee makes a payday loan based on applicant eligibility information obtained from the database provider's alternative means of database access, then the licensee shall transmit to the database any remaining information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee via the Internet.

3. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control and the database provider's alternative means of database access is unavailable or otherwise unable to provide the licensee with applicant eligibility information (including eligibility for an extended payment plan or extended term loan), then the licensee may make a payday loan to an applicant if the applicant signs and dates a separate document containing all of the

representations and responses to the questions set forth below and the prospective loan otherwise complies with the provisions of the Act and this chapter. The document shall be printed in a type size of not less than 14 point and contain a statement that the representations and questions relate to loans obtained from either the licensee or another payday lender. The licensee shall retain the original document in its loan file and provide the applicant with a duplicate original. ~~The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to query the database.~~

a. The representations to be made by an applicant are as follows:

- (1) I do not currently have any outstanding payday loans.
- (2) I did not repay or otherwise satisfy in full a payday loan today.
- (3) In the past 90 days I did not repay or otherwise satisfy in full a payday loan by means of an extended payment plan.
- (4) In the past 45 days I did not repay or otherwise satisfy in full a fifth payday loan that was obtained within a period of 180 days.
- (5) In the past 90 days I did not repay or otherwise satisfy in full an extended term loan.
- (6) I did not obtain an extended term loan within the past 150 days.
- (7) I am not a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(8) I am not married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(9) I am not under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(10) One-half or less (including none) of my financial support for the past 180 days was provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

b. The questions to be presented to an applicant are as follows:

(1) In the past 12 months, have you obtained an extended payment plan in order to repay a payday loan? If the applicant's response is "no" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision C 4 of 10VAC5-200-33.

(2) Have you obtained four or more payday loans within the past 180 days? If the applicant's response is "yes" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision E 4 of 10VAC5-200-35.

3. c. If a licensee makes a payday loan based upon an applicant's written representations and responses pursuant to subdivision L 3 of this section, then the licensee shall transmit the information required by this section to the database the information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee, via either directly the Internet or through the database provider's call center alternative means of database access.

4. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall document in its records the technical problems it experienced and the date and time that it sought to access the database.

M. The following provisions address a licensee's inability to access the database via the Internet subsequent to loan application making a loan:

1. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall ~~contact the database provider's call center and request that the call center enter the information required by this section on the licensee's behalf. The licensee shall document in its records the technical problems it experienced, the specific information it provided to the call center, the date and time of the phone call, and the first and last name or identification number of the person in the call center who entered the information on the licensee's behalf~~ to the extent possible use the database provider's alternative means of database access, such as a telephone interactive voice response

system, for purposes of transmitting the information required by this section to the database. If the database provider's alternative means of database access is unavailable or otherwise unable to accept the information, then the licensee shall transmit to the database the information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee, via either the Internet or the database provider's alternative means of database access.

2. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control ~~and the database provider's call center is closed or also unable to access the database~~, then the licensee shall ~~transmit to the database the information required by this section no later than the time the licensee closes for business on the date the database becomes accessible to the licensee, either directly or through the database provider's call center.~~ The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.

N. By the close of business on each business day, a licensee shall transmit to the database the total daily number (even if 0) of individuals who were unable to obtain payday loans from the licensee because they are members of the military services of the United States or the spouses or other dependents of members of the military services of the United States. If the licensee is unable to access the database due to technical problems beyond the licensee's control, then the licensee shall transmit to the database the information required by this subsection no later than the time the licensee closes for business on the next business day that the licensee is able to access the database. The

licensee shall also document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.

O. A licensee shall have limited access to the information contained in the database. The database shall only provide a licensee with the following information: (i) whether an applicant is eligible for a new payday loan; (ii) if an applicant is ineligible for a new payday loan, the general reason for the ineligibility (e.g., the database may state that the applicant has an outstanding payday loan but it shall not furnish any details regarding the outstanding loan); and (iii) if an applicant is eligible for a new payday loan, whether the applicant is also eligible for an extended payment plan or extended term loan. The database shall also permit a licensee to access information that the licensee is required to transmit to the database provided that such access is for the sole purpose of verifying, updating, or correcting the information. Except as otherwise provided in this subsection, a licensee shall be prohibited from accessing or otherwise obtaining any information contained in or derived from the database.

P. If the Commissioner of Financial Institutions determines that a licensee has ceased business but still has one or more outstanding payday loans that cannot be repaid due to the licensee's closure, the Commissioner of Financial Institutions may authorize the database provider to mark the outstanding loans as satisfied in the database in order to enable the affected borrowers to obtain payday loans in the future.

Q. 1. Except as provided in subsection F of 10VAC5-200-35, payday loans made on or after October 1, 2008, and prior to January 1, 2009, that remain outstanding on January 1, 2009, shall be considered for purposes of determining a borrower's eligibility for a payday loan. Accordingly, on or before January 1, 2009, a licensee shall transmit the following information to the database in connection with every payday loan made on or after October 1, 2008, that will or may be outstanding as of January 1, 2009:

- a. Name of licensee and license number.
 - b. Office location of licensee.
 - c. First and last name or identification number of employee entering information into the database.
 - d. Borrower's first and last name.
 - e. Last four digits of borrower's driver's license number or identification card number.
 - f. Borrower's address.
 - g. Borrower's date of birth.
 - h. Date loan funds were disbursed.
 - i. Date loan is due.
2. A licensee shall obtain and retain the borrower information required by this subsection in accordance with the provisions of subsection D of this section.
3. For every payday loan made on or after October 1, 2008, that remains outstanding as of January 1, 2009, a licensee shall transmit to the database all *applicable information required by subsection J of this section* within the time prescribed therein or January 1, 2009, whichever is later.

10VAC5-200-130. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.